

**REMARKS**

Please reconsider the application in view of the above amendments and the following remarks. Applicant thanks the Examiner for carefully considering this application.

**Disposition of Claims**

Claim 21 is pending in this application.

**Rejection(s) under 35 U.S.C. § 112**

Claim 21 stands rejected under 35 U.S.C. § 112, ¶ 2 as being indefinite. This rejection is respectfully traversed.

Applicant respectfully notes that section 2173.02 of the *MPEP* requires that the definiteness of claim language be analyzed, not in a vacuum, but in light of several factors including the particular application disclosure and the claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made. Further, the test for definiteness is whether "those skilled in the art would understand what is claimed when the claim is read in light of the specification." *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576 (Fed.Cir. 1986).

Claim 21 recites a rheology modifier that is a mixture of C<sub>12</sub> to C<sub>22</sub> poly-carboxylic fatty acids, including at least a dimer poly-carboxylic C<sub>12</sub> to C<sub>22</sub> fatty acid, and a trimer poly-carboxylic C<sub>12</sub> to C<sub>22</sub> fatty acid. The Examiner asserts it is unclear whether the C<sub>12</sub>-C<sub>22</sub> limitation is with respect to the overall dimer/trimer polycarboxylic acid or with respect to the monomer unit of the dimer/trimer polycarboxylic fatty acid. Turning to the specification of the present application, paragraph [0015] states:

... In one illustrative embodiment, the rheology modifier is a poly-carboxylic fatty acid. More preferably, the poly-carboxylic fatty acid is trimeric and therefore at least three carboxyl groups in the molecule, and more preferably the trimeric poly-carboxylic acid is derived from tall oil or other similar unsaturated long chain carboxylic acids (*i.e.* fatty acids) having from 12 to 22 carbons. ... It should be noted that the poly-carboxylic fatty acids utilized in the present invention may include a dimer poly-carboxylic C<sub>12</sub>-C<sub>22</sub> fatty acid, trimer poly-carboxylic C<sub>12</sub>-C<sub>22</sub> fatty acid, tetramer poly-carboxylic C<sub>12</sub>-C<sub>22</sub> fatty acid, mixtures of these acids.

When read in light of the disclosure of the present application, a person skilled in the art of chemistry would understand that the poly-carboxylic acids are derived from C<sub>12</sub>-C<sub>22</sub> fatty acids such as tall oil, and thus, the C<sub>12</sub>-C<sub>22</sub> limitation is with respect to the monomer fatty acid of the dimer/trimer poly-carboxylic acid

Thus, for the reasons outlined above, claim 21 satisfies all of the requirements of § 112. Accordingly, withdrawal of this rejection is respectfully requested.

**Rejection(s) under 35 U.S.C. § 102/103**

Claim 21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,017,854 issued to Van Slyke ("Van Slyke"). This rejection is respectfully traversed.

Claim 21 recites a drilling fluid that includes, *inter alia*, an oleaginous fluid comprising from about 30% to about 95% by volume of the drilling fluid as the continuous phase; a non-oleaginous fluid comprising from about 5% to 70% by volume as the non-continuous phase; a primary emulsifier in an amount sufficient concentration to stabilize the invert emulsion; and a rheology modifier, wherein the rheology modifier is a mixture of C<sub>12</sub> to C<sub>22</sub> poly-carboxylic fatty acids, including at least a dimer poly-carboxylic C<sub>12</sub> to C<sub>22</sub> fatty acid, and a trimer poly-carboxylic C<sub>12</sub> to C<sub>22</sub> fatty acid, wherein the mixture of poly-carboxylic fatty

acids is added in sufficient concentration so that the trimeric poly-carboxylic fatty acid concentration in the drilling fluid is greater than 0.1 pounds per barrel and is up to 5.0 pounds per barrel.

Van Slyke discloses a fluid that contains one or more non-aqueous fluids, a viscosifying agent, and optionally, weighting agents, organophilic clays, fatty acid dimers and trimers. The fluids taught in Van Slyke are taught as increasing the suspending capacity of the fluid, even in the absence of materials such as water (non-oleaginous fluids), emulsifiers, lime, and polar activators. *See* col. 2, lines 41-44. Moreover, only in select embodiments is any non-oleaginous fluid included in the fluids of Van Slyke, and in those embodiments, there is an explicit teaching that water should be kept below 5 percent by volume, and is preferably absent from the fluid. *See* col. 18, lines 25-27 and lines 38-50.

Applicant respectfully asserts that Van Slyke neither shows nor suggests each and every limitation of claim 21. Thus, because Van Slyke does not show or suggest all of the claim limitations, as recited in claim 21, claim 21 is patentable in view of Van Slyke. Accordingly, withdrawal of this rejection is respectfully traversed.


**Conclusion**

Applicant believes this reply is fully responsive to all outstanding issues and places this application in condition for allowance. If this belief is incorrect, or other issues arise, the Examiner is encouraged to contact the undersigned or his associates at the telephone number listed below. Please apply any charges not covered, or any credits, to Deposit Account 50-0591 (Reference Number 05542/073001).

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Respectfully submitted,

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Attachments